

**U.S. District Court
Northern District of Ohio (Akron)
CIVIL DOCKET FOR CASE #: 5:10-cv-00042-DDD
Internal Use Only**

Renewable Lubricants, Inc. v. United Bio Lube et al
Assigned to: Judge David D. Dowd, Jr
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 01/08/2010
Date Terminated: 05/03/2011
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Renewable Lubricants, Inc.

represented by **Joseph A. Dickinson**

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TERMINATED: 08/24/2010
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Patent #
5,736,493
5,863,872
5,996,055
6,383,992
6,534,454
6,624,124
6,620,772

with the RENEWABLE LUBRICANTS marks. Upon information and belief, www.renewablelubricants.com was renewed on January 3, 2010.

FIRST CLAIM FOR RELIEF
(Common Law Trademark Infringement)

33. Renewable Lubricants re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 32 above as if fully rewritten herein.

34. Renewable Lubricants owns and enjoys rights throughout the United States and globally in and to the RENEWABLE LUBRICANTS marks in association with the products and services provided by Renewable Lubricants, and which are superior to any rights which Defendants may claim in and to said trademarks in any form or style.

35. The use by Defendants of Plaintiff's RENEWABLE LUBRICANTS marks is likely to cause, and in fact has caused, confusion as to the source of Defendants' goods and services in that purchasers thereof will be likely to associate or have associated such goods and services with and as originating from Defendants, all to the detriment of Renewable Lubricants.

36. The continuing use by Defendants of Plaintiff's RENEWABLE LUBRICANTS marks is likely to cause, and in fact has caused, confusion as to an association, endorsement, or affiliation of Defendants with Plaintiff Renewable Lubricants.

37. Defendants' willful and deliberate acts described above have caused injury and damages to Renewable Lubricants, have caused injury to Renewable Lubricants' goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Renewable Lubricants will have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(False Designation of Origin, Unfair Competition
Under §43(a) of the Lanham Act; 15 U.S.C. § 1125(a))

38. Renewable Lubricants re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 37 above as if fully rewritten herein.

39. Defendants' use of Plaintiff's RENEWABLE LUBRICANTS marks constitutes a false designation of origin and unfair competition which is likely to deceive and has deceived customers and prospective customers into believing that the source of Defendants' goods and originated with Defendants, and, as a consequence, are likely to divert and have diverted customers away from Renewable Lubricants.

40. Defendants' use of Plaintiff's RENEWABLE LUBRICANTS marks constitutes a false designation of origin and unfair competition which is likely to deceive and has deceived customers and prospective customers into believing that Defendants' services are affiliated, sponsored, or approved of by Plaintiff Renewable Lubricants, and, as a consequence, are likely to divert and have diverted customers away from Renewable Lubricants.

41. By its unauthorized use of Plaintiff's RENEWABLE LUBRICANTS marks, Defendants have falsely designated the origin of its services and has competed unfairly with Renewable Lubricants, in violation of 15 U.S.C. § 1125(a).

42. Defendants' acts described above have caused injury and damages to Renewable Lubricants, have caused injury to Renewable Lubricants' goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Renewable Lubricants will have no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Violation of Anti-Cybersquatting Consumer Protection Act;
15 U.S.C. § 1125 (d)(1))

43. Renewable Lubricants re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 42 above as if fully rewritten herein.

44. Defendants' url www.renewablelubricants.com, and other urls owned and used by Defendants listed in Exhibit C, are confusingly similar to Plaintiff's RENEWABLE LUBRICANTS mark and url www.renewablelube.com.

45. Defendants' url, www.renewablelubricants.com, and other url's owned and used by Defendants listed in Exhibit C, have been at all times relevant to this proceeding, dilutive of Plaintiff's RENEWABLE LUBRICANTS marks.

46. Upon information and belief, Defendants have never had intellectual property rights in the url www.renewablelubricants.com, or other url's listed in Exhibit C, as those urls do not consist of their legal name or a name that is otherwise commonly used to identify Defendants.

47. In registering and using the url www.renewablelubricants.com, and other url's listed in Exhibit C, Defendants have acted on a bad faith intent to profit from Plaintiff's RENEWABLE LUBRICANTS marks, including intent to divert customers from Renewable Lubricants' Website to Defendants' website for commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation, endorsement, or origination of the goods and services offered on the site.

48. Defendants' aforesaid acts constitute cybersquatting in violation of 15 U.S.C. § 1125(d)(1), thereby invoking and making available to Plaintiff the remedies provided by 15 U.S.C. §§ 1116 and 1118.

FOURTH CLAIM FOR RELIEF

(Violation of the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.; Deceptive Trade Practices)

49. Renewable Lubricants re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 48 above as if fully rewritten herein.

50. This claim is for deceptive and unfair trade practices under state law.

51. The Defendants' conduct, described above, constitutes deceptive trade practices in violation of the Ohio Consumer Sales Practices Act, ORC §1345.01 et seq.; Deceptive Trade Practices.

52. As a result of Defendants' intentional and wrongful acts described above, consumers have relied on, and will rely on, Defendants' deceptive and unfair practices in purchasing and evaluating Defendants' goods and services, causing irreparable injury to Plaintiff Renewable Lubricants' goodwill and reputation and the reputation of the RENEWABLE LUBRICANTS marks in a manner that may not be adequately compensated by money damages, and unless enjoined, will cause further injury whereby Renewable Lubricants shall have no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Renewable Lubricants, Inc. prays for judgment as follows:

A. Judgment against Defendants for temporary, preliminary, and permanent injunctions granted pursuant to 15 U.S.C. § 1116, enjoining Defendants and their affiliates, partners, representatives, servants, employees, attorneys and all persons in active concert, privity or participation with, Defendants of and from using the trademark "RENEWABLE

LUBRICANTS”, and from otherwise infringing Plaintiff’s trademarks; from competing unfairly with Plaintiff; from falsely designating the origin of the Defendants’ services, from diluting the distinctive quality of Plaintiff’s trademarks, from engaging in deceptive trade practices in violation of 15 U.S.C. § 1051 *et seq.* and the Ohio Consumer Sales Practices Act, ORC §1345.01 *et seq.*; and from engaging in unfair competition, and further specifically from:

(i) using in any manner Plaintiff’s RENEWABLE LUBRICANTS trademarks, any mark or name confusingly similar to RENEWABLE LUBRICANTS, or any other mark which so resembles Plaintiff’s marks as to be likely to cause confusion, deception or mistake, on or in connection with any goods and/or services;

(ii) passing off, inducing or enabling others to offer goods an/or services or pass off any goods and/or services as being rendered by Plaintiff, which services are not in fact that of Plaintiff or associated with Plaintiff, under the control, supervision and approval of Plaintiff, or for sale under the marks owned by Plaintiff, or any other mark which so resembles Plaintiff’s marks so as to be likely to cause confusion, deception or mistake;

(iii) committing any acts, including use of the RENEWABLE LUBRICANTS trademarks, calculated to cause purchasers to believe that goods and/or services offered by Defendants’ are those sold under the control and supervision of Plaintiff, or are sponsored or approved or connected with Plaintiff, are guaranteed by Plaintiff, rendered under the control and supervision of Plaintiff;

(iv) further diluting and infringing Plaintiff’s RENEWABLE LUBRICANTS marks and damaging its goodwill;

(v) selling/offering to sell any goods and/or services under the RENEWABLE LUBRICANTS marks, or any other distinctive design or trademark confusingly similar thereto.

B. Judgment against Defendants pursuant to the power granted the Court under 15 U.S.C. §§ 1117, 1118 that Defendants cease and desist any and all use of the RENEWABLE LUBRICANTS marks on its website, including on labels, signs, packages, brochures, advertising matter, receptacles, sale and purchase documents, letterhead, and other material in the possession of Defendants or under Defendants’ control which bear the RENEWABLE LUBRICANTS mark

or any other mark confusingly or substantially similar to Plaintiff's trademarks or which have been used in connection with the advertising, offering for sale, or sale of goods and/or services bearing said RENEWABLE LUBRICANTS mark which are not Plaintiff's or made without the authorization or control of Plaintiff;

C. Ordering that Defendants be adjudged to have violated Sections 43(a) and 43(c) of the Lanham Act, 15 U.S.C. §§ 1125(a) and 1125(c), and the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.

D. Ordering an accounting of all gains, profits, savings, and advantages realized by Defendants from their aforesaid acts of trademark infringement, cybersquatting and dilution, false designation of origin and unfair competition;

E. Awarding such damages as Plaintiff shall establish in consequence of Defendants' aforesaid acts of trademark infringement, cybersquatting and dilution, false designation of origin and unfair competition, together with appropriate interest thereon, including three times the amount found as actual damages by the trier of fact to properly compensate Plaintiff for its damages, pursuant to 15 U.S.C. § 1117(a);

F. Ordering Defendants to send letters to clients indicating no association whatsoever to Plaintiff;

G. Ordering Defendants to deactivate all web sites and deliver up for destruction any and all services, product packaging, promotional materials, advertisements, commercials and other items in the possession, custody or control of Defendants which, if sold, displayed or used, would violate the injunction herein granted;

H. Granting Plaintiff the remedies provided by 15 U.S.C. §§ 1116 and 1118.

I. Awarding Plaintiff punitive and exemplary damages against Defendant and in

favor of Plaintiff by reason of Defendants' unfair competition;

J. Awarding Plaintiff the costs of this action;

K. Declaring that this is an exceptional case, pursuant to 15 U.S.C. § 1117, and that Plaintiff be awarded its reasonable attorneys' fees;

L. Judgment against Defendants indemnifying Plaintiff from any claims brought against Plaintiff for negligence, debts, malpractice, or other breaches of any duty owed by Defendants to any person who was confused as to some association between Plaintiff and Defendants as alleged in this Complaint;

M. Judgment against Defendants for any and all claims, demands, or causes of action (now or in the future) resulting from Defendants' actions alleged in the Complaint; and

N. For such other and further relief as this Court deems just and equitable.

Dated January 8, 2010.

s/Joseph A. Dickinson
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DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff, Renewable Lubricants, Inc., hereby demands a trial by jury on all issues triable by a jury.

Dated: January 8, 2010

EMERSON, THOMSON & BENNETT

s/Joseph A. Dickinson

Verification of Complaint

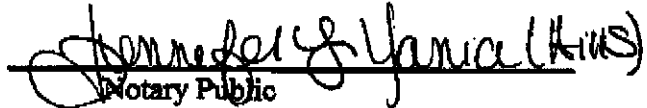
I, Jacqueline L. Garmier, a citizen of the United States, a resident of Portage County, Ohio, and an President of Plaintiff, Renewable Lubricants, Inc., the owner of rights providing the basis for this complaint, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and that to the best of my knowledge, the facts as alleged therein are true and correct.

Date: 1/18/10


Jacqueline L. Garmier



Sworn to and subscribed before me this ____
day of January, 2010.


Notary Public

My Commission Expires: March 5, 2012

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RENEWABLE LUBRICANTS, INC.)	CASE NO. 05:10-CV-00042
)	
Plaintiff,)	
)	JUDGE: DAVID D. DOWD, JR.
v.)	
)	MAG. JUDGE: BENITA Y. PEARSON
UNITED BIO LUBE, et al.)	
)	<u>AGREED ORDER OF DISMISSAL</u>
Defendants.)	
)	
)	

The Court has been advised that the above captioned matter has been resolved pursuant to a Settlement Agreement that is being filed under seal with the Court. Accordingly, Plaintiff's claims against Defendants United Bio Lube and Jeffrey S. Marth are hereby dismissed with prejudice. The Court hereby retains jurisdiction to enforce the terms of said Settlement Agreement, if necessary.

IT IS SO ORDERED.

May 3, 2011

Date

s/ David D. Dowd, Jr.

JUDGE DAVID D. DOWD, JR.
UNITED STATES DISTRICT COURT

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V.

Defendant

United Bio Lube

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WE SO AGREE

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WE SO AGREE

/s Jeffrey S. Marth/

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Defendants, Pro Se

United Bio Lube

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Steven M. Auvil
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Date Filed	#	Docket Text
01/08/2010	<u>1</u>	Complaint with jury demand against All Defendants. Filing fee paid \$

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RENEWABLE LUBRICANTS, INC.
476 Griggy Road, N.E.
P.O. Box 474
Hartville, Ohio 44632-0474

Plaintiff,

v.

UNITED BIO LUBE
505 Cypress Point Drive, #283
Mountain View, California 94043

and

JEFFREY S. MARTH, an individual
505 Cypress Point Drive, #283
Mountain View, CA 94043

Defendants.

CASE NO.

JUDGE:

VERIFIED COMPLAINT

**Federal and Common Law Trademark
Infringement (False Designation of
Origin, Unfair Competition); Violation of
Anticybersquatting Consumer Protection
Act; and Violation of State Deceptive
Trade Practices Act**

JURY DEMAND

Plaintiff Renewable Lubricants, Inc. for its claim against Defendants United Bio Lube and Jeffrey S. Marth states as follows:

PARTIES

1. Plaintiff Renewable Lubricants, Inc. (hereinafter "Renewable Lubricants"), is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 476 Griggy Road, N.E., Hartville, Ohio 44632-0474.

2. Upon information and belief, Defendant United Bio Lube (hereinafter "UBL" and/or "Defendant"), is a California corporation having its principal place of business located at 505 Cypress Point Drive, #283, Mountain View, California 94043.

3. Upon information and belief, Defendant Jeffrey Marth (hereinafter "Marth" and/or "Defendant"), is an individual holding himself out as the Founder and Chief Executive Officer of Defendant United Bio Lube, with a principal place of business located at 505 Cypress Point Drive, #283, Mountain View, California 94043 (collectively, Defendant United Bio Lube and Defendant Jeffrey S. Marth will be referenced as "Defendants").

JURISDICTION AND VENUE

4. Jurisdiction is founded on a federal question under the Lanham Act. The Court has subject matter jurisdiction over the federal trademark infringement, cybersquatting, false designation of origin, and unfair competition claims pursuant to the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1332 and 1338(a) & (b). The Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. § 1367(a). Plaintiff Renewable Lubricants is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 476 Griggy Road, N.E., Hartville, Ohio 44632-0474. This Court has personal jurisdiction over the Defendants because, *inter alia*, Defendants solicits business in Ohio via the World Wide Web, *i.e.*, use of interstate commerce, Defendants conducts business in Ohio and have entered into contracts in Ohio to do business in Ohio, and because the injury and effects of Defendants' trademark infringement and other unlawful conduct are felt in Ohio (the Plaintiff Renewable Lubricants' state of incorporation and principal place of business).

5. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial portion of the property and events that are the subject of this action are situated in this district, contracts in which Defendants were a party were to be performed in the district, and Defendants have committed many of the acts alleged herein in this district.

BACKGROUND OF THE CASE

6. Renewable Lubricants, *inter alia*, is a business with its primary purpose being to develop, manufacture, and sell proprietary and non-proprietary high performance bio-based lubricant technologies ("RLI Products").

7. Renewable Lubricants is the assignee of United States Patent 5,736,493, United States Patent 5,863,872, United States Patent 5,990,055, United States Patent 6,383,992, United States Patent 6,534,454, United States Patent 6,624,124, and United States Patent 6,620,772.

8. Renewable Lubricants has been doing business as, and using the mark, RENEWABLE LUBRICANTS in commerce since at least as early as October 28, 1993 to market, sell, and designate the patented RLI Products; and as a result, owns common law trademark rights deriving from their use of the mark commerce.

9. Renewable Lubricants filed federal trademark application No. 77479764 on May 20, 2008, for the mark "RENEWABLE LUBRICANTS" in association with the goods and services listed in Exhibit A (a true and correct copy of the aforementioned trademark application).

10. Renewable Lubricants has used the mark RENEWABLE LUBRICANTS since at least as early as October 28, 1993, and the mark has been continuously used therein in interstate commerce in association with the products developed, manufactured, and sold by Plaintiff.

11. Renewable Lubricants is also the owner of the uniform resource locator (url) www.renewablelube.com ("Renewable Lubricants' Website"), registered on March 25, 1998, which is Renewable Lubricants' website used to market and advertise the goods and services in association with its RENEWABLE LUBRICANTS marks.

12. Plaintiff's RENEWABLE LUBRICANTS marks are shown in association with its good and services on its website, www.renewablelube.com, a true and accurate representation of which is attached herein as Exhibit B.

13. Renewable Lubricants licenses the use, sale, and distribution of its patented RLI Products through various commercial channels and entities.

14. Renewable Lubricants' use of its RENEWABLE LUBRICANTS marks predate Defendants' use of "RENEWABLE LUBRICANTS" as described *infra*.

15. Renewable Lubricants' Website advertising its services in association with its RENEWABLE LUBRICANTS marks predates Defendants' use of "RENEWABLE LUBRICANTS" and registration and use of www.renewablelubricants.com (and other confusingly similar derivative domain names owned by Defendants and listed in attached Exhibit C and herein incorporated by reference) as described *infra*.

16. Renewable Lubricants' registration of its url, www.renewablelube.com, predates Defendants' registration and use of the url www.renewablelubricants.com as well as the other url's set forth in Exhibit C attached hereto and incorporated herein by reference.

Defendants' Use of "Renewable Lubricants"

17. Upon information and belief, Defendants are in the business of providing marketing and distributor services for bio-based lubricants and related products.

18. Upon information and belief, Defendant Jeffrey S. Marth contacted Plaintiff Renewable Lubricants sometime in 2002 and expressed an interest in acting as the head of business marketing for Plaintiff Renewable Lubricants. Plaintiff Renewable Lubricants declined Defendant's offer.

19. Upon information and belief, beginning in January of 2003, Defendants began purchasing internet domain names similar to Plaintiff Renewable Lubricant's trademarks.

20. Specifically, upon information and belief, on or about January 23, 2003, Defendants purchased and registered the url for www.renewablelubricants.com (true and correct portions of which are attached to this Complaint as Exhibit D).

21. Upon information and belief, Defendants also purchased the urls for www.renewable-lubricants.com, www.renewable-lubricants.net, www.renewable-lubricants.org, www.renewablelubricants.net, www.renewablelubricants.org, and www.renewablelubricants.us in 2003.

22. Upon information and belief, Defendants acquired and owns the above referenced urls, and the urls listed in Exhibit C, without the authority or permission of Plaintiff Renewable Lubricants.

23. Upon information and belief, on or around May 20, 2004, Defendant Jeffrey S. Marth, now doing business as United Bio Lube, placed an order for 360 units of Plaintiff's Bio Penetrant Lubricant. Pursuant to the terms of the sale, Plaintiff United Bio Lube would be permitted to sell the product under the private label name "United Bio Lube", conditioned on Plaintiff Renewable Lubricants being listed as the manufacturer of the product, among other standard terms and conditions.

24. Upon information and belief, Defendants purchased a total of approximately \$47,000 of Plaintiff RLI's Products between May of 2004 and January of 2009.

25. Upon information and belief, between at least as early as May of 2005 and September of 2008, Defendants actively solicited the execution of a formal business agreement (Sales/Agency/Distributor) between Plaintiff Renewable Lubricants and Defendants. No

agreement was ever executed.

26. At least as early as May of 2008, Plaintiff discovered Defendants' registration and use of the domain name www.renewablelubricants.com, and other confusingly similar domain names listed in Exhibit C, and demanded that Defendants immediately terminate unauthorized use of the RENEWABLE LUBRICANT mark.

27. On or about August 13, 2008, Defendants acknowledged that Plaintiff "needs to control these trademarks and websites", and offered to transfer ownership in the domain names in exchange for a percentage of sales, an opportunity to become Plaintiff Renewable Lubricants' Vice President of Business Development, or both.

28. On or about August 28, 2008, Defendant Jeffrey S. Marth requested a license to make use of certain domain names to which Plaintiff had objected to Defendants' unauthorized use.

29. At least as early as January 27, 2009, Plaintiff notified Defendants that their websites contained misleading statements implying that they owned the patents on their bio-based lubricant products, and that as a result customers were expressing confusion as to the source of Defendants' products, and Defendants' association with Plaintiff.

30. At least as early as January 27, 2009, Plaintiff became aware that Defendants were holding themselves out as the owner of the RLI Products, Renewable Lubricant patents, and biobased lubricant technologies, and demanded that Defendants cease making such untrue and unlawful statements.

31. Upon information and belief, at least as early as March 18, 2009, Defendants terminated the relationship with Plaintiff Renewable Lubricants.

32. Upon information and belief, www.renewablelubricants.com and a host of other urls listed in Exhibit C are still actively advertising Defendants' goods and services in association